IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 7865 of 2006(J)

PETITIONER:

SRI.VARGHESE DAVID, S/O.THOMAS DAVID,
KOIKALATHEU, MUNDUKOTTACKAL P.O.PATHANAMTHITTA.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT EXEUCTIVE OFFICER, KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD, PATHANAMTHITTA.

3. THE TAHSILDAR, PATHANAMTHITTA.

R2 BY ADV. SRI.K.HARILAL, SC,KMTWF BOARD
R1 AND R3 BY GOVERNMENT PLEADER SRI. SREEKRISHNA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF SALE AGREEMENT DATED 15.6.2004 EXECUTED BY THE PETITIONER IN FAVOUR OF SEBASTIAN JOSEPH.

EXT.P2 TRUE COPY OF THE FINAL DETERMINATION ORDER PASSED BY THE RESPONDENT IN RESPECT OF 2002-03 DATED NIL.

EXT.P3 TRUE COPY OF THE PROVISIONAL DETERMINATION ORDER PASSED BY THE RESPONDENT IN RESPECT OF 2004-05 DATED 13.7.2005

EXT.P4 TRUE COPY OF REVENUE RECOVERY NOTICE DEMANDING RS. 22,092/- FROM THE PETITIONER DATED 18.7.2005

2ND RESPONDENT'S EXHIBITS:

EXT.R2(a) PHOTOCOPY OF THEDETERMINATION ORDER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 8.2.2005

EXT.R2(b) PHOTOCOPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY THE PETITIONER.

EXT.R2(c) PHOTOCOPY OF THE ENQUIRY NOTICE ISSUED BY THE 2ND RESPONDENT DATED 5.3.2005

EXT.R2(d) PHOTOCOPY OF THE FINAL DETERMINATION ORDER DATED 20.4.2005 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.R2(e) PHOTOCOPY OF THE ENDORSEMENT OF THE COVER RETURNED BY THE POSTAL AUTHORITY.

EXT.R2(f) PHOTOCOPY OF THE ORDER SHEET ISSUED BY THE 2ND RESPONDENT INQUIRY NO. EP 483/2003

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 7865 OF 2006

Dated this the 19th day of September, 2007

JUDGMENT

Petitioner was admittedly operating stage carriage during 2003-04. The demand under challenge is based on final determination order produced by the second respondent as Ext.R2(d). It is seen that demand is made only for two workers whereas a stage carriage with two doors cannot be operated without a minimum of four workers. Therefore if the matter is remanded assessment will be made leading to serious adverse orders against the petitioner. In the circumstances, and since petitioner was served with pre-assessment notice, evidenced by Ext. R2(b) acknowledgement, there is no scope for interference with the final determination order based on which recovery is made. However, recovery should be limited to the balance amount payable after adjusting the amount already paid, proof of which will be produced by the petitioner before the Tahsildar. If the petitioner has made payment voluntarily, no collection charges will be recovered from the petitioner or otherwise recovery will be made with collection

charges. Petitioner is also granted one month's time to make payment of the balance tax and recovery will be continued after one month, that too if default is continued.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge